

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)**

AT DAR ES SALAAM

COMMERCIAL REVIEW NO. 03 OF 2023

(Arising from Commercial Case No.14 of 2022)

OXLEY LIMITED.....APPLICANT

VERSUS

NYARUGUSU MINE COMPANY LIMITED.....1ST RESPONDENT

FERRANTI PROCESSING LIMITED.....2ND RESPONDENT

RULING

A.A MBAGWA J.

This ruling is in respect of preliminary objection on point of law raised by the respondents' counsel. The applicant brought this application under the provisions of Section 78, Order XLII Rule (1) and (2) of the Civil Procedure Code seeking the Court to review its decision in Commercial Case No. 14 of 2022 delivered on 13th February, 2023.

The application met an objection from the 1st respondent to the effect that-

“That the review application is statutorily time barred”



When the matter was called on for hearing of that preliminary objection, the applicant enjoyed the services of Mr. Denis Tumaini, learned advocate. On the other side 1st respondent was represented by Mr. Helymick Chagula, learned advocate while the 2nd respondent did not enter appearance.

Submitting in support of the preliminary objection, Mr. Helymick Chagula had it that according to item 3 Part III of the Schedule to the Law of Limitation Act, the application must be brought within thirty (30) days from the date of the decision sought to be reviewed. He clarified that the ruling was delivered on 13/02/2023 but the present application was filed on 16th day of March, 2023. As such, the learned counsel opined that application is out of prescribed time and therefore liable for dismissal. He thus prayed the Court to dismiss the application.

In rebuttal, Mr. Denis Tumaini strongly contested the objection. He told this Court that the application is within time as it was electronically filed on 15th March, 2023 at 19:00hrs. Mr. Majaliwa expounded that Judicature and Application of Laws Act (Electronic Filing Rules ,2018 G.N No. 148 of 2018 which allows electronic filing. To support his position, Mr. Majaliwa referred this Court to the case of **Mohamed Hashil vs. National Microfinance Bank Limited (NMB Bank)**, Revision No.106 of 2020, High Court (Labour Division) at Dar Es Salaam at Page 3. Based on the

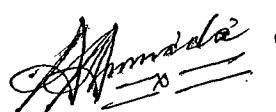


above, the learned applicant's counsel insisted that the application is within time and urged the Court to overrule the objection.

In rejoinder Mr. Helymick Chagula submitted that the document is said to have been filed in court when the court's fee is paid. He cited case of **Access Bank Tanzania Limited Vs. Mahit Manyori Wambura**, Civil Revision No.37 of 2021 HC at Dar Es Salaam to buttress his assertion.

As the respondent referred to the case of **Access Bank Tanzania Limited Vs. Mahit Manyori Wambura** (supra) which he did not cite in his submission in chief, this Court granted the applicant's counsel leave to comment on the case. The applicant's counsel replied that the position in the case of **Access Bank Tanzania limited (supra)** has already been departed and pledged to supply the court with the most recent decisions. Nonetheless, until at the time of composing this ruling, the applicant's counsel had not furnished this Court with any decision on electronic filing.

Since there is no dispute that filing fee was paid on 16th March, 2023, the issue for determination is whether the date of filing is 15th March, 2023 when the application was electronically filed or 16th March, 2023 when the filing fee was paid. The deliberation on the issue above will pave way whether the application is within time or not.



Rule 21(1) of Judicature and Application of Laws (Electronic Filing) Rules, GN. No. 148 of 2018 provides;

'A document is said to have been filed if it is submitted through electronic filing system before midnight, East Africa time on the date it is submitted, unless specific time is set by the court or it is rejected'

As indicated above, in light of the above provision, electronic filing is allowed and recognised. However, the question is: **Is electronic filing alone complete without payment of fee?** This court in the cases of **Access Bank Tanzania Limited vs Mahiti Manyori Wambura**, Civil Revision No. 37 of 2021, HC at Dar es Salaam and **Mustapha Boay Akunaay vs Mosses Meimar Laizer (Legal Administrator of Lucia Letroviki Laizer and 2 Others)**, Land Reference No. 06 of 2020 has held that the date of filing is the date of payment of fee and not the date on which the document was electronically filed. The Court reasoned that the advent of Electronic Filing Rules did not change the old established position which considers the date of filing to be the date of payment of fee.

On my part, I fully subscribe to the position taken by my learned Brother and Sister in the above decision. The reason is simple that is, if physical



filing of document does make the document properly filed before the Court unless the filing fee is paid, it naturally follows that electronic filing, which in my view, is a substitute of physical filing cannot be considered to be proper filing in absence of payment of fee. See also the case of **John Chuwa vs Anthony Ciza 1992 [TLR] 233**. I have read the ruling of this Court in **Mohamed Hashil vs. National Microfinance Bank Limited (NMB Bank)** which was cited by the applicant's counsel. With due respect to the learned counsel, the decision, in my view, is distinguishable in that issue of payment date was not discussed at all.

Furthermore, Mr. Denis Majaliwa supplied this Court with the case of **NCBA Bank Tanzania Limited vs TACAS Limited and 2 others**, Misc. Civil Application No. 1 of 2021, HC at Dar es Salaam. I have keenly read the case but I could not find anything helpful for the Court to determine the issue at hand. What is discussed therein is automatic exclusion of the requisite time for collecting a copy of ruling and drawn order which was not pleaded in the instant matter.

Mindful of the above position, it common cause that the date of filing this application is 16th March 2023 when the filing fee was paid through Control Number: 991400849670 and not 15th March, 2023 when the

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document was electronically filed. As such, it naturally follows that the review application was filed out of time for one day.

It is a settled position that delay even of a single day cannot be condoned without following a proper procedure. In the case of **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016, CAT at Dar Es Salaam, the Court quoted with approval the holding of Kalegeya J, as he then was in case of **John Cornel v. A. Grevo (T) Ltd**, Civil Case No. 70 of 1998 to the following effect;

'However unfortunate it may be for the plaintiff, the Law of Limitation, on actions, knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web.'

On the same strength, I am incapable of deciding otherwise than upholding the settled position. I therefore hold that the application is time barred. That said and done, I sustain the preliminary objection and proceed to dismiss the application. The applicant should bear the costs.

It is so ordered.




A.A. Mbagwa

JUDGE

31/07/2023